

**STATE OF NEVADA BOARD TO REVIEW CLAIMS
BOARD MEETING MINUTES
SEPTEMBER 16, 2014**

1. CALL TO ORDER

Chairman John Haycock called the meeting to order at 10:00 a.m. The meeting was conducted via videoconference with locations in Las Vegas, at the Grant Sawyer Building, 555 E. Washington Avenue, Room 4401 and in Carson City at the Nevada Legislative Building, 401 S. Carson Street, Room 3137.

A. BOARD MEMBERS PRESENT

Chairman John Haycock, Representative of independent petroleum dealers
Dave Emme for Colleen Cripps, Ph.D., Nevada Division of Environmental Protection
Maureen Tappan, Representative of the general public
Michael Cox, Representative of the independent retailers of petroleum
Wayne Seidel, Department of Motor Vehicles
Peter Mulvihill, State Fire Marshal

ATTORNEY GENERAL'S OFFICE

Rose Marie Reynolds, State Attorney General's Office – Las Vegas

BOARD MEMBERS ABSENT

Vice-Chairman George Ross, Representative of petroleum refiners

OTHERS PRESENT

Laurie McElhannon, Greg Lovato, Steve Fischenich, Don Warner, Jeff Collins,
Johnathan McRae, Gail Dansby, Rex Heppe, Todd Croft, Valerie King, Victoria Joncas,
Sandi Gotta, Kim Valdez, Gail Dansby, Chad Schoop – Nevada Division of
Environmental Protection (NDEP)
Mike Ezell – Washoe County District Health Department
Nick Florey – Washoe County District Health Department
Krista Hunt – Washoe County District Health Department
Keith Stewart – Stewart Environmental Inc.
Jon Bell – Broadbent & Associates, Inc.
Brandon Reiff – Broadbent & Associates, Inc.
Paul Brosseau – Petroleum Systems & Maintenance Inc.
Karen Park – Petroleum Systems & Maintenance Inc.
Joe McGinley – McGinley & Associates
Ren Bevell – High Desert Petroleum
Eric Atman – High Desert Petroleum
Sam Bailey – High Desert Petroleum
Adam Katle – Cardno ATC

Roll Call was taken and Ms. Rose Marie Reynolds, State Attorney General's Office, confirmed the establishment of a quorum.

2. PUBLIC FORUM

There were no requests to speak.

3. APPROVAL OF THE AGENDA

Mr. Seidel moved to approve the agenda. Ms. Tappan seconded the motion. There was no discussion. Motion carried unanimously.

4. APPROVAL OF THE JUNE 12, 2014 MINUTES

Mr. Seidel moved to approve the minutes as submitted. Mr. Mulvihill seconded the motion and the motion carried.

Ms. Reynolds stated there was a typo noted on page 21 in the middle of the page. Paragraph begins Ms. Tappan noted that the invoice specifies “of” the fund...it should be “if” the fund.... Ms. King stated the correction will be noted on the finalized minutes

5. STATUS OF THE FUND

Ms. King reported on the financial status of the State of Nevada Petroleum Discharge Cleanup Fund (Fund) and reported on the final ending revenue and expenditures for fiscal year 2014 which ended June 30, 2014. The balance forward from fiscal year 2013 was approximately \$7.5 million, approximately \$418,000.00 had been collected for storage tank enrollment, approximately \$13 million was collected from the ¾ cent per gallon fee, interest earned was \$30,488.50 and \$3,000,000.00 was balanced forward to the new fiscal year. This brought the final cumulative revenue for FY14 to a total of \$17,890,086.81.

Ms. King reported the expenditures were nominal for the Board’s salary, in-state travel and operating. The transfer to the Highway Fund was \$3,434,984.62, the transfer to NDEP for administration of the fund was \$1,118,166.21, the transfer to the Environmental Commission was \$1,536.83 and the transfer to DMV was \$12,714.00. The total amount paid out for the reimbursement of claims during the fiscal year was \$8,806,618.66. The total cumulative expenditures for the fiscal year were \$13,378,080.07.

Ms. King reported the actual funding available is the cumulative revenue minus the cumulative expenditures, resulting in a fund balance of \$4,512,006.74.

6. SITE SPECIFIC BOARD DETERMINATION (FOR POSSIBLE ACTION)

A. Site Specific Board Determination No. C2014-06 (FOR POSSIBLE ACTION)

Proposed Site Specific Board Determination to Provide Third Party Liability Coverage to the Lyon County School District, 112 N. California St., Yerington, NV - Petroleum Fund ID No. 1992000102, Facility ID No. 3-000035

Mr. Steve Fischenich, NDEP Fund Staff, reported that the Board previously approved the subject site for \$990,000.00 which represents \$1 million in Fund coverage for one UST system with a copayment capped at \$10,000.00. As of this Board meeting, the subject site has been reimbursed \$984,133.61. Despite progress in remediating the site, additional funding is needed to finish corrective action activities at the site, including post remediation, groundwater sampling and well abandonment.

In accordance with Board Resolution #2007-10, which clarifies the policy regarding the use of 3rd party liability monies, the owner/operator has acknowledged that using third party liability funds for corrective actions will reduce the remaining funds in the event of a third party lawsuit. Fund Staff therefore recommends that the subject facility receive the Third Party Liability funds, which amounts to an additional \$1 Million in coverage (minus the \$10,000.00 copayment). This increases the cap for this facility to \$1,980,000.00.

Mr. Fischenich also noted that a claim is associated with this Site Specific Board Determination, although the recommended reimbursable amount is NOT contingent upon the Board adopting this Site Specific Board Determination.

No additional comments or questions were asked by the board concerning this item.

Mr. Peter Mulvihill moved to approve Site Specific Board Determination #C2014-06 as proposed by staff granting third party liability fund coverage for one underground storage tank with a \$10,000.00 deductible. Mr. Mike Cox seconded the motion and the motion carried with no opposition.

B. Site Specific Board Determination No. C2014-07 (FOR POSSIBLE ACTION)

Proposed Site Specific Board Determination to Provide Reduced Petroleum Fund Coverage to Hertz Rent-A-Car, 1551 National Guard Way, Reno, NV - Petroleum Fund ID No. 1994000112, Facility ID No. 4-000503

Mr. Steve Fischenich, NDEP Fund Staff, reported that Site Specific Board Determination No. C2014-07 proposes to reopen Case 1994-112 and provide reduced coverage to Hertz Rent-A-Car. NDEP's recommendation is due to the existence of comingled contaminant plumes at the site, only one of which is eligible for coverage. Hertz Rent-A-Car, owned by The Hertz Corporation is located at 1551 National Guard Way, Reno, Nevada. Hertz previously received full coverage (\$990,000.00) from the Fund in March of 1994 for a release discovered in 1993 from one UST system. After soil and remediation activities were conducted, a "No Further Action" letter was granted in February of 1997 and the Petroleum Fund case was closed.

In October of 2013, the Fund received an Application for Coverage from The Hertz Corporation for soil and groundwater contamination discovered subsequent to removal of the three tank systems in 2012. The source of the contamination was thought to be only due to the eligible piping release discovered in 1993 (in which full coverage was granted). However, at the request of NDEP, Washoe County Health District, – the oversight agency for this case - provided a determination in which it was stated that, based on the available evidence, soil and groundwater contamination discovered at the site were likely due to both a historic release as well as a more recent release. Based on this determination, Fund staff believes that the contaminant plume consists of contamination from the eligible release discovered in 1993 and an ineligible release discovered when the tanks were removed in 2012. The more recent release is considered ineligible since the source is not known. In a case such as this where we have an eligible source (the 1993 discovered release) comingled with a recent release in which the source has not been identified, and the percentages of the releases are not known, Fund Staff may utilize Policy Resolution No. 99-022 for a recommendation to the Board.

Mr. Fischenich stated that pursuant to Board Resolution No. 99-022, Amended, Fund staff may recommend to the Board a standard 20% reimbursement reduction for sites at which contamination from an eligible release (1993 release) and non-reimbursable events (the recent discovery) have been discovered coincidentally and where the percentage or volume of contaminant contribution from the non-Fund eligible release cannot be determined. Board Resolution No. 99-022, Amended, also states that coverage granted for non-Fund eligible release sources will be subject to a 10% co-payment.

NDEP recommended that Petroleum Fund case 1994000112 be reopened, and Fund coverage granted with a 20% reduction, in addition to a 10% co-payment. Mr. Fischenich noted that the Board may adjust Fund staff's recommendation as they see fit. Further, if new information is provided in the future, Fund staff may revise our recommendation to the Board. He also noted that a claim has been submitted for this case although it will not be processed until the requested Not to Exceed Proposal is submitted. Mr. Fischenich further stated that a case officer with Washoe County was available for questions also. He stated that Hertz has communicated to NDEP that they will not contest the recommendation.

Chairman Haycock asked if the Hertz Rent-A-Car was paid the total amount of coverage for the 1993 release. Mr. Fischenich replied that it had not reached the \$1,000,000.00 maximum. Member Dave Emme moved to adopt NDEP's recommendation for #2014-07 and provide coverage to Hertz with a

20% reduction and a 10% copay. Member Wayne Seidel seconded the motion and the motion carried with no opposition.

C. Site Specific Board Determination No. C2014-08 (FOR POSSIBLE ACTION)

Proposed Site Specific Board Determination to Provide Reimbursement for Claim #0006 in the total amount of \$161,497.65 to Kamar Brothers, LV, LLC, for the Arco AM/PM site located at 2000 East Cheyenne Avenue, North Las Vegas, NV - Petroleum Fund No. 2012000018, Facility ID No.8-001107.

Valerie King, Supervisor of the BCA Petroleum Branch reported on this Site Specific Board Determination regarding Kamar Brothers, LV, LLC, Arco AM/PM site located in Las Vegas, NV. For Background Purposes Ms. King presented the following:

NDEP received Claim #6, which included an invoice from Petroleum Systems & Maintenance, Inc. (PSMI) for \$708,137.26. The invoice was not submitted with 3 valid bids and the bid which was awarded the contract was unusually high. NDEP had grave concerns regarding the invoiced amount and consequently recommended the Board deny reimbursement. During the June 2014 Board meeting, *Ms. King emphasized that the following point is important*, PSMI testified that the reason its bid was unusually high was because of the difficult site conditions which increased the actual costs incurred by PSMI. This was new information to NDEP. However, as a result of that testimony regarding the bid being based upon actual costs related to difficult site conditions, this Board was able to move past the bid issue and address how to reimburse the claimant.

Given the testimony of PSMI, this Board voted to partially reimburse the owner, Mr. Kamar. The original bid from PSMI was for \$396,610.00. However, because more work had to be done, the final invoice was for just over \$708K. The Board directed NDEP to pay the bid amount of \$396,610.00, less the 20% reduction and 10% copayment. Approximately \$294,000.00 was paid by the Fund for the total claim, including the PSMI invoice. The Board lastly directed NDEP to obtain from Mr. Kamar information to make a recommendation to the Board for the remainder of the invoiced amount, which is \$311,527.36.

To act upon the Board's direction during the June 2014 meeting and be able to provide a defensible recommendation for reimbursement, NDEP needed to better understand the invoiced costs.

NDEP took action in two different ways. First, NDEP conducted a site comparison study which demonstrated the Kamar site was VERY similar to another nearby site where PSMI had recently submitted a bid with tonnage rates that were approximately 25% of what it submitted for the Kamar site. This comparison was presented in Attachment B where more similarities were found than differences. Given this information, NDEP was not able to verify PSMI's testimony regarding the actual costs.

Secondly, NDEP obtained a competitive bid from an NDEP contractor. The contractor fully researched the pre-existing excavation conditions of the site, conducted a site walk-through and reviewed the original Request for Bid document. The independent bid, which NDEP is extremely confident in, included a 15% overhead markup and a 10% profit markup. It resulted in a bid with a tonnage rate approximately 29% of PSMI's bid rate (\$81.25 vs. \$282 per ton). Again, NDEP was unable to verify PSMI's testimony at the previous board meeting stating that the bid was based upon actual costs. Furthermore, NDEP was unable to verify any issues of the site having difficulties such as access as was previously testified to.

Although NDEP had two project references for much less costs, NDEP wanted to be fair to Mr. Kamar and PSMI. NDEP sent a letter to Mr. Kamar asking for the PSMI invoiced amount to be broken down into itemized costs.

In response, PSMI, not Mr. Kamar responded by denying NDEP's request. PSMI indicated that the contract was a "fixed price" contract and stated that the project had been priced based not only on actual costs, but also "intangible" costs that he described as costs associated with the credibility and historical performance of the owner, risks involved, having to carry half a year of expenses and "so on."

PSMI's letter directly contradicted PSMI's testimony from the June 2014 meeting where it was testified that the bid was based on actual costs. As a result of that testimony regarding the bid being based upon actual costs related to difficult site conditions, this Board was able to move past the bid issue and address how to reimburse the claimant.

NDEP once again sent a letter to Mr. Kamar requesting a breakdown of the PSMI invoiced costs. Mr. Kamar responded by once again, denying the request. All written information has been supplied to the Board.

NDEP determined the only way to provide this Board a defensible recommendation for reimbursement is to take the invoice provided by PSMI and apply the rates of our NDEP contractor's bid, which we are very confident in. The reimbursement amount for the \$708K invoice, using our contractor's rates for the same work, is \$212,788.91 – a difference of almost one half million dollars.

Ms. King called attention to Attachment C where NDEP developed a comparison table using PSMI's invoice for the work completed at \$708,137.36 and NDEP's contractor rates for the same work resulting with \$212,788.91. Ms. King pointed out that this reflects a difference of \$495,348.45 that NDEP can not justify.

Ms. King added two points be made for clarification. First, NDEP is not disputing the work that was done. In an effort of fairness, NDEP has taken all invoiced tonnage and applied the rates that NDEP is comfortable with to recommend a fair and defensible reimbursement amount.

Secondly, PSMI, in its letter stated that the contract with Mr. Kamar was a "fixed price per unit/ton" contract and therefore he does not have to submit an actual cost breakdown. NDEP emphasized to the Board that the contract was between Mr. Kamar and PSMI, not NDEP and PSMI. Ms. King cited a regulation, "*Pursuant to NAC 590.780.2, the operator/owner SHALL provide ANY additional information required by the Board in order to determine eligibility for payment from the Fund.*" She stated that Mr. Kamar is responsible for paying his contractor, and to do that, he is responsible for providing any supportive information needed. He refused two separate times to do that.

Ms. King reported that NDEP received new information that NDEP believes support its original concerns regarding the high costs of the bid and the bid process. NDEP received an email from High Desert Petroleum (Attachment I) who was present during the Kamar site pre-bid job walk. The email is directly related to this claim. Ms. King read the email aloud and provided a copy to the Board and attendees so it could be read into the record. The email was sent to Steve Fisichenich, NDEP on September 10, 2014 in reference to this claim and is included in the attachments provided to the Board as Attachment I. Attachment I contained two emails and one attached Cost Sheet. The first email was dated September 10, 2014 to Steve Fisichenich, NDEP from Ren Bevell, High Desert Petroleum. Attached to that email was an

email dated April 9, 2014 from Lawrence Banks, Westmark sent to Ren Bevell, High Desert Petroleum and an attached Cost Sheet for the Arco Station No. 5347 in North Las Vegas, NV for estimates prepared by Ren Bevell.

In summary, the email from Mr. Bevell to NDEP stated that High Desert Petroleum (not Mr. Bevell) was present during the Kamar site pre-bid job walk. Mr. Bevell wrote that High Desert Petroleum was told at the job walk by the CEM at the time, Westmark, that Kamar Brothers only had 70% coverage in the Fund and that they would need to inflate their bids accordingly if they expected to get paid "100%." He wrote that to his knowledge, High Desert Petroleum elected not to bid on the job at that time.

Mr. Bevell wrote that on April 9, 2014, after the work had been completed, he received a request from Mr. Lawrence Banks, Westmark, requesting him to complete an additional bid request for the site by filling in numbers that would be over \$400,000.00. Mr. Banks needed it quickly so he could submit a claim package to the Petroleum Board within the next hour. Mr. Bevell explained that not only was he busy on another project but he also did not feel comfortable throwing out a bid at the requested amount as he had not spent any time on the project himself. He therefore did not comply with the request from Westmark. His email stated that later he was approached by the new CEM, Mr. Keith Stewart of Stewart Environmental, to prepare some "lump sum numbers" that would be reflective of a typical tank removal with associated contaminated soil removal. Mr. Bevell provided the requested information for an estimated total amount of \$177,125.00 to Mr. Stewart and was attached to the email.

Ms. King directed the Board to Attachment J, a timeline prepared by NDEP that shows the sequence of events with respect to the new information received. Two items Ms. King wanted to point out included: 1) PSMI was told by Westmark on May 8, 2013 it was the lowest bidder and to move forward on a contract with Mr. Kamar. To do this legally, there must be three bids, which Westmark testified previously it had. 2) PSMI conducted the invoiced work from April 1, 2014 through April 8, 2014. The day after the work was completed, April 9, 2014, Westmark requested High Desert Petroleum to provide an after-the-fact bid that must be over \$400,000.00 within the hour so it could submit a claim. Please keep in mind that PSMI just completed the work under a bid for \$396,000.00. Also, Westmark was no longer the CEM of record on the project and was not responsible for submitting the claim, Stewart Environmental was.

In summary, Ms. King stated that the new information does not change the recommendation to the Board for reimbursement. The recommendation and approach to making that recommendation is the same that was proposed prior to receiving the new information. However, it supports NDEP's concerns about the bid process and legitimizes the concern regarding inflating bids to cover reductions and copayments, and also supports NDEP's approach to using the lower rates for reimbursement for this project.

In conclusion, NDEP is recommending that Claim #6, which was partially reimbursed by the Board during the June 2014 meeting in the amount of \$293,848.83, which includes a 20% reduction and 10% copayment, absent of the requested information from Mr. Kamar, be reimbursed using the unit rates provided by NDEP's contractor. In doing so, the actual claim should have been \$161,497.65 which now requires Mr. Kamar to refund the Petroleum Fund a total of \$132,351.18.

As far as the balance of the \$708K invoice, the other \$311K dollars that NDEP was tasked with figuring out how to reimburse, in light of the evidence and testimony provided today, NDEP respectfully

recommends DENIAL of the balance of that claim based upon the testimony and evidence provided this morning. This ended Ms. King's presentation

Chairman Haycock opened it to the Board for questions.

Board Member Mike Cox asked why the case had a 20% reduction. Ms. King explained that in 2012 the Board had provided coverage with a 20% reduction due to Mr. Kamar not maintaining financial responsibility.

Mr. Keith Stewart, Stewart Environmental, stated that Mr. Kamar was not present but he felt strongly that Westmark Group was hired as the CEM and was responsible for obtaining the three required bids. Mr. Kamar believes his responsibility for that is relieved. Mr. Stewart also stated that according to the timeline, his company was not involved with those bids. He also pointed out that his company received the bids two days after the work was completed. He expressed concerns with the NDEP contractor and its use of a contractor that does not work in Las Vegas. He expressed his belief that the rates were lower than those used in the area. He also stated that 'after the fact' bids were not considered acceptable to NDEP in prior meetings, so for NDEP to use an 'after the fact bid' here as the basis for non-payment would set a precedent that the Board may not want.

Mr. Paul Brosseau, PSML, stated that the statement made regarding the payment costs being based solely on site conditions was factually incorrect. He stated that in the minutes on page #9 he had the same concerns that High Desert Petroleum had regarding the reputation of the owner and the long payment term up to 120 days. The costs do not include only site conditions. Also, he believes the values that the contractor out of Reno used in its bid are absurd. As an example, the Reno contractor has \$8.25 for soil excavation while both High Desert and Earth Resources have \$25.00 in that line item for soil excavation. He stated the rates used were ludicrous. He stated he seems to be accused of some things, so let's go for it.

Member Dave Emme asked why the supplemental information requested by NDEP was not provided or why there was a reluctance to supply the information.

Mr. Brosseau stated that he discussed it with Mr. Kamar and Mr. Kamar did not want to provide it. Mr. Brosseau stated it was his belief and suggestion to Mr. Kamar that it was a fixed price contract and suggested to Mr. Kamar that there was no reason to provide it. He added that it was absurd that it was being requested on a flat rate bid. There is the reputation of the owner taken into account, the risk is taken into account, the site conditions are taken into account; those are taken into account with a fixed price contract.

Mr. Brosseau also added that Ren (Bevell, High Desert Petroleum), was not personally on the site walk and during the site walk it was mentioned that there was a 70% Fund reimbursement. He clarified that it was not stated that the owner *will* not pay, but keep in mind the owner has a reputation to consider and with a 70% reimbursement, that should be taken into consideration. It was never stated that he *will not pay* and Mr. Brosseau wanted to clarify that statement because he did not want someone's reputation "screwed" because of this.

Member Dave Emme asked the NDEP staff if it is reasonable and customary for NDEP to take into account these intangible costs with a difficult client. He also asked if the staff has seen this situation before.

Ms. King responded that she does not believe there is anything in writing that says NDEP will not pay for risk; however it is not the intention of this program to pay additional costs for someone's reportedly bad business practices. She stated that ultimately, the fund ends up paying for it and consequently, the owner gets rewarded for having bad business practices.

Member Dave Emme stated that the fixed price notion is not a common practice in his 25 years of experience. He stated that NDEP did its job by allowing the claimant to provide additional information and gave them the opportunity to explain further, but they chose not to. The independent cost estimates that NDEP obtained seemed to be reasonable action by NDEP to support the claim. It is the fiduciary responsibility of the Board to scrutinize these claims and watch the public funds. He indicated that he did not see another basis to look at the claim that was reasonable. He also stated that as far as the intangible costs, they are a risk that the contractor is taking on and not something that the Board should pay for. He stated that he would be inclined to support NDEP's recommendation.

Member Mike Cox asked if there have been any other cases like this where the staff has done their research and gone back to review the costs and bids. He asked if staff typically does the review comparison from bid costs to invoiced costs.

NDEP staff member Steve Fischenich responded that yes, staff reviews the bids and claims on a regular basis. Typically they are excavation projects, however they have done this for years and this particular claim really jumped out at them.

Board Member Tappan asked if there has been any payment so far on this case and if any of the contractors have been paid. She added that at the last meeting she understood that the funds were being disbursed to Kamar and it was his responsibility to pay his contractors.

Ms. King answered that yes, NDEP did pay an amount of \$294, per the direction of this board. Mr. Kamar did fill out the required paperwork so the funds could be sent directly to Mr. Stewart; however NDEP has not received confirmation that he received payment.

Mr. Stewart stated that he received a check for payment; however he was unable to cash it the way it was written. After it was sent back, he received funds electronically and confirmed that he kept about \$8,000 and paid the balance amount to PSMI for the subcontractors. He added that should the Board decide that they request reimbursement, he hopes that they do not go into his bank account to obtain the funds.

Mr. Stewart added a comment in response to Mr. Emme's statement that it is typical to have time and materials contracts; however anything over 3,000 in the Nevada State Petroleum Fund requires fixed bids and that is why it was confusing. The prices did not increase, the tonnage increased. When Westmark put out the bid it was based on 600 tons, however it ended up being 2,400 tons which resulted in a much higher number overall.

Ms. King acknowledged that NDEP was aware of that discrepancy and took that into account with the requested bid estimate from the NDEP contractor and made that adjustment.

Mr. Wayne Seidel asked for verification in the original bid from PSMI which was for 600 tons in the amount of about \$400,000, and the 2,146 ton in the amount of about \$708,000 was the reflection in a difference in tonnage.

Ms. King confirmed the difference, however cautioned that we do not want to go down the road of questioning tonnage removed as that is not the crux of this issue. NDEP is questioning the unit price. The crux of this issue is the unit price. She added that NDEP case officers were present during the site activities. The Case Officers were comfortable with the activities and reported on them.

Mr. Wayne Seidel asked if there was a difference in prices from Las Vegas and Reno assuming there may be additional costs for distances traveled and other variables.

Ms. King responded in knowing it could be an issue, NDEP attempted to make adjustments for those variables by asking our contractor to get rates from the Las Vegas sub-contractors. So, the cost estimates used by the NDEP contractor are Las Vegas rates. She further cautioned that NDEP is only using this as a "Plan B" and did not intend on having to use them. NDEP would prefer to use the rates and information from Mr. Kamar so a recommendation could be made to the Board from those figures. However, absent of that information, NDEP is forced to use the information from our subcontractor. She added that NDEP is very confident in the rates being provided by the contractor.

Mr. Steve Fisichenich, NDEP added that the costs that were used at Fire Station #1 in Las Vegas were actually higher than the rates being used by the NDEP contractor for this site. Fire Station #1 in Las Vegas was used as a comparable site for reference purposes.

Mr. Stewart asked to add an additional comment about comparative bids. He stated that if NDEP wished to get bids after the fact that High Desert had provided comparable costs that Mr. Stewart felt were very fair and comparable for the Las Vegas area. If an after-the-fact bid was going to be used, Mr. Bevell's submission of comparable rates should be considered.

Ms. Tappan stated that it seems like the aspect of contention here is a rate difference in the bid that amounts to about \$40,000. She stated that perhaps the Board could reconsider that particular aspect; however *there is an intangible difference of almost \$500,000*. That is a huge number to add to a bid for intangible costs and she stated that she has a real problem considering approving payment of that amount due to an owner that is difficult to work with. She stated that she does not understand how much of the bid was inflated based on the difficult owner – was it 40% more, was it 20% more?

Mr. Brosseau answered that yes, it was inflated or raised over the norm based on long payment term quality of the customer, site conditions and things like that. He stated that he has a degree from UCLA both in Micro and Macro Economics, he has been doing this for 28 years, has a successful business, he *does* know what he is doing and has a better idea of what he is doing than someone out of Northern Nevada sitting behind a desk. Those things are taken into account. Whenever anybody does a bid, all of these things are taken into account. He further stated that the site conditions at Kamar and the Fire Station were completely different. The Fire Station was a wide open site with no canopy to deal with

while the Kamar site had two canopies, no place to stockpile soil, and they had a vertical hole that had to be dug and was completely different than the site conditions at the Fire Station.

Mr. Brosseau further stated: The difference in site conditions and the risk of dealing with Wagih Kamar were all things that were taken into consideration when he developed a fixed price contract with him. Mr. Brosseau further stated that he knew it was a risk to deal with Wagih and he took that into consideration when he prepared his bid. If this Board decided not to pay for the additional risk and if the funds are not approved to Mr. Kamar then he is not sure he will get paid either. He stated that the lawsuits will start flying and Mr. Brosseau will expect to get paid per his fixed price contract with Mr. Kamar and Mr. Kamar expects to get paid per his contract with NDEP and things will be a mess. Mr. Brosseau stated he has a contract with Wagih for a fixed price and he expects to get paid. Mr. Kamar believes he has done everything he was required to do including the three bids, per the CEM he hired, he believes he has done what was required and expects to get paid. Mr. Brosseau further stated that he knew it was going to be a problem, and now he sits here six months later and has only been paid 50% of his bill.

Chairman Haycock read aloud the minutes from the last board meeting regarding the motion that was passed unanimously by the Board. He read: *"Vice Chairman Ross moved to reimburse the amount of the original bid of \$396,610. When staff has received the documentation that they feel they need to feel comfortable with the remaining amount of the bill that the remainder would be paid, which will be approved by the Board at the next Board meeting. The reimbursement is subject to a 10% Copayment and a 20% reduction previously established. Mr. Seidel seconded the motion. Motion carried unanimously."* Mr. Haycock stated that there may be different interpretations of the motion. His interpretation was that a contractor in good faith submitted a bid, he performed the work, and based on some circumstances he was not aware of, may be left not getting paid. Not wanting to leave contractors without payment, the motion was made to approve payment of the original bid. If there is additional documentation and they believe they are due more funding, then they can submit further documentation to be considered by the Board at the next meeting. Mr. Haycock's interpretation was that if they want further funding, they will submit it, which they clearly did not do. He disagreed with Ms. King's interpretation that it was the Board's direction to substantiate additional funds.

Chairman Haycock stated he was confused that NDEP went out and obtained a subsequent bid as he thought the issue was resolved at the last meeting. He further wanted to be cautious because of NDEP's statement in previous minutes regarding subsequent bids. He read from Page #5 of the minutes *"NDEP decided that the after the fact courtesy bids were not representative of realistic competitive bids because the bidders could not observe the pre-site conditions and also because the bidders knew they were not going to get the job."* He stated that NDEP cannot say that subsequent bids are not relevant in one meeting and then at another meeting they are relevant.

Chairman Haycock further commented on the email from High Desert Petroleum and stated that in his opinion there is nothing wrong with an inflated bid as there is nothing illegal in doing it. He stated he has done it himself in the past. He could have bid twice that much and it happens all the time, but if you bid to high you risk not winning the bid. As far as PSMI, he understands that in a competitive bid situation, risk is dealt with by putting a premium in the bid. He further states that he does not believe there was an impropriety on PSMI's part by inflating the bid for risk. Chairman Haycock further stated he believes that Mr. Kamar believes he did what he should have done, however it does not relieve him of his

responsibility. Chairman Haycock asked Mr. Brosseau if he provided the subsequent additional information to NDEP as requested.

Mr. Brosseau stated he believes he did provide subsequent additional information. It related to the previous discussion regarding the amount of excavated soil and backfill material. This includes the tonnage of backfill quantity material that was used. When he got back to the office that day, he submitted the quantity paperwork to Keith Stewart and he submitted it to NDEP. By providing the backfill *quantities*, he believes he provided the required information.

Chairman Haycock asked NDEP if they agreed the additional information that was requested was provided. Ms. King replied no. NDEP questioned why the bid was so much less than the quantity that was invoiced. There was a difference in the amount of soil moved and invoiced, but that was not the point of contention. NDEP was questioning the bid process.

Chairman Haycock asked Ms. King to clarify what information NDEP was asking for and did not receive in terms of additional information.

Ms. King further explained that in reference to Mr. Haycock's interpretation about the motion, NDEP interpreted the motion differently. NDEP has a responsibility to provide the Board all the information they need to understand all the merits of the case to make a decision. The information provided by Mr. Brosseau via testimony at the last meeting was new information to NDEP. NDEP had not been given information that there were difficult site conditions and thus the costs would be increased. NDEP believed it was their responsibility to research the new information about the site and provide the board information that was realistic and representative of the site conditions so they would be able to approve the requested higher costs. NDEP did not go off on a tangent; staff was trying to give the Board all the information they needed regarding the new information provided at the last meeting.

Mr. Mulvihill stated that his recollection of the motion was very similar to Chairman Haycock and that the Board had approved the initial contract price and with the deductions it came to approximately \$293,000. The request for additional information to substantiate additional funding would be for future claims and if the owner did not cooperate, there would be no further money approved. Any irregularities in the bidding process may need to be investigated separately by other enforcement authorities. Mr. Mulvihill stated he was comfortable with that approach at the last meeting.

Ms. King commented on an earlier comment made about NDEP's action to get a bid from another contractor and presenting it here while not accepting an after-the-fact bid in a previous meeting. She explained that NDEP obtained the bid from NDEP's contractor without ever anticipate to use it for a reimbursement recommendation. However, the refusal of Mr. Kamar to provide NDEP with the requested information regarding the invoice left NDEP in a position to use other sources to provide the Board with a defensible recommendation for reimbursement. She stated the bid was obtained to educate NDEP. If industry standards had changed such that there was *that* large of a discrepancy, then NDEP needed to know about it. NDEP never intended to use it for a reimbursement recommendation, but NDEP also did not anticipate that Mr. Kamar would refuse to provide the requested information. Ms. King reiterated that NDEP is fully confident in the numbers provided by its contractor. She stated that the crux of the matter is not that NDEP can use an after-the-fact bid in one situation and not another, the crux is "Why are they refusing to give NDEP the costs? Why shouldn't they be transparent about those costs?"

In response to Ms. King's statement, Chairman Haycock stated that although he was still "fuzzy" about why they would not provide the costs, he also did not understand why it was relevant that they needed to provide them to NDEP. He stated that in his mind the problem is that there is a three bid policy that the CEM acknowledged they thought they had fulfilled, and then found out after the fact that it had not been fulfilled. The problem was further compounded by the fact that there is a huge premium in the bid. Mr. Haycock further stated that he does not have a problem with PSMI inflating their bid, because if they inflate it too much, then they lose the bid. The problem is that the three bid process broke down through no fault of PSMI's, who stands to probably be the biggest loser here. So, in our last meeting we came up with a compromise that would not pay the additional \$400,000 unless they came back to the Board with additional information. He suggested that it is possible to put a "cents per ton" value of risk in a bid and he believes it would be proper.

Member Mike Cox agreed with Chairman Haycock's assessment. He states that perhaps the fault lies in Westmark where he believes the process broke down by not properly reviewing them. He stated that if PSMI did the work then they should be paid for the work.

Ms. King responded by clarifying that if the Board is comfortable with the unit rates that were presented by PSMI and does not want to know how much has been folded in as a payment for 'risk,' if that is not something that this Board wants to consider, then staff is not in a position to say anything more. She reiterated that NDEP staff is extremely concerned that the cost is very inflated and staff believes that the Board should not have to pay that amount.

Chairman Haycock agreed the cost was extremely inflated and because they did not follow protocol, the Board is not obligated to pay anything. He further stated that if the Board decided not to pay anything, they would be on solid ground. However, as a Board we recognize that the community performing the work that we oversee consists of contractors that we would like to see stay in business. He recognized that the bid contains an inflated price, however if the three bid process would have been done, the Board would be paying the full invoice minus 30%.

Ms. King responded that NDEP did receive new information after that meeting. In addition, she believes that Stewart Environmental apparently did not understand the intent of the motion either and immediately filed a second appeal after the meeting to receive the balance of the \$708K.

Mr. Keith Stewart responded by stating the way the motion was approved, results in the consultant, drillers, labs and others will not get paid. Either way, Stewart Environmental will not get paid whether a refund is requested or whether additional money is disbursed.

Member Tappan asked if it was possible to put a time limit on receiving information. She clarified that her question was if the Board could establish a date if the information being requested is not received in a certain timeframe it would not be considered. Mr. Haycock referred the question to the Attorney General Representative, Rose Marie Reynolds who stated she would be reluctant to do that.

Chairman Haycock wanted to address Mr. Stewart's statement in reference to his companies likelihood that they will not get paid. Mr. Haycock wanted to reiterate that if his company does not get paid, it is not

through a fault of the Board. It is Mr. Kamar's responsibility to pay him not following through with his responsibilities.

Mr. Stewart responded that he fully understood the responsibilities here, but he wanted to bring it up and be sure it was put on the record. He assumes that following this Board meeting, several lawsuits may be filed in attempts to get paid for the work they have completed.

Mr. Greg Lovato, Deputy Administrator of NDEP commented that NDEP was attempting to look at the facts of this case, make a recommendation as to what is the most defensible use of the funding and what incentives this gives to other contractors who are trying to get work done and trying to bid competitively. If this Board makes a decision where future claims are filed and they can look back at this situation and see the incentive that they can add 10%, 20% because this Board has set a precedent which sends a bad message. NDEP believes in making this recommendation we are guarding against a rise in future costs. If the message is sent that NDEP will abide by unknown inflated costs even when we have evidence of an improper bidding process, then that is what is going to happen and costs are going to continue to rise. NDEP came forward with this information because going forward, improper incentives should not be rewarded, nor should they be rewarded by the Board for the risk they are taking.

Chairman Haycock responded by saying that he believes the Board policy of requiring a three bid process over \$3,000 protects against those effects and results. It is not the Board's job to tell contractors what they can and can't put in their bids. He believes the competitive process will keep others from adding a 10% to their bid.

Chairman Haycock continued by saying he believes the motion made at the last meeting was done, and the fact that they have not provided further information, there should be no further action required.

Member Wayne Seidel stated that NDEP has done an exceptional job providing information and it is black and white. This is an exceptional case. In seconding the motion last month, the intent was to provide cash for the people who have done the work in the amount of \$218K. He agrees that it is a premium situation. The original motion in June was to not damage the people who had done the work.

Member Tappan asked for clarification if there is no further motion made today, the claimant could not provide additional information to justify a new action. Chairman Haycock responded that he could not imagine what additional information could be provided would prompt a new motion or action by the Board. However, he stated that perhaps a presentation by the claimants to the Board that stated why they bid what they bid and a plea that it was through no fault of their own that the bidding process fell apart.

Chairman Haycock stated that unless he hears something to prompt a new motion, the motion from last Board meeting would stand and no further action would be taken.

Mr. Brosseau commented that asking for a breakdown on a fixed price contract does not have a point. He believes providing payment to the contractor is not the intention of NDEP. He believes that if they provided that information, it is obviously NDEP's intent to review them so they can unilaterally use them to develop fixed costs without taking into consideration other factors that have been talked about. He believes it is NDEP's intention to control costs in the Las Vegas market by obtaining those costs and that

is why they used a contractor out of Reno. He also stated that as a result of this, contractors may choose not to bid on some projects with difficult owners, and therefore the work will not get done.

Dave Emme stated that he supports the motion made at the last meeting because Colleen Cripps voted for that motion and he appreciates the Chairman clarifying the intent from the last meeting. However, he added that the comments made by Mr. Lovato are certainly something to be taken into consideration and are troubling to think about.

Mr. Todd Croft, NDEP Supervisor in the LUST Remediation Branch spoke to the statement made by Mr. Brosseau regarding owners choosing not to do the work. NDEP has processes in place that allow the owner to do the cleanup on a voluntary basis. They are given many opportunities to do the work.

Chairman Haycock commented that Mr. Brosseau's comments are in reference to the contractor choosing not to play the game and not bid on projects. The owners do not have a choice.

Mr. Croft clarified that his comment is in reference to the premium is something that the owner owes to the contractor, not NDEP owing the contractor. Then, NDEP has a process whereby they can use other actions to ensure that the work gets done. There are other mechanisms that the contractor has to capture their costs.

Chairman Haycock commented that he does not to take away the right of the contractor to charge a premium charge for a difficult owner. They have the right to do that and if we take that right away, then nobody will participate in the bidding process to do the work.

Mr. Steve Fisichenich commented that NDEP still believes that it is not the responsibility of NDEP to pay the extra premium to an owner who is difficult to play with. A price of \$283 per ton speaks for itself. It is not NDEP's responsibility to pay for those costs.

Chairman Haycock responded that yes, that comment may be correct. However, perhaps that is something that should be discussed at a future date, but now is not the time. We need to figure out some kind of mechanism to ensure that doesn't happen, but this is not the case to enforce that. Somebody is responsible to pay that cost. We aren't. Maybe it is the CEM or someone else is, but this Board is not responsible.

Chairman Haycock asked the AG Representative if it was appropriate that this item die due to lack of motion. She responded that yes, if that is the Board's intention.

Ms. King asked for clarification from the Board as to what will qualify as substantial information that would satisfy the Board's request for additional information to bring it back to the Board. What would the Board request that NDEP be open to receiving? Would it be a unit price? What information would be appropriate and be relevant enough to re-open this case to be brought back before the Board.

Chairman Haycock commented that he could not think of anything that would be relevant enough to warrant reconsideration. However, if it does happen to be brought forward, then it should be brought back. He stated that he was not willing to make a definition of what was relevant and what was not relevant.

Mr. Brosseau asked for clarification also. If he presented the owner with the possibility of bringing forth information about details such as the value of waiting for six months to get paid and other things would it go back before the Board? Or would it then be up to NDEP's Environmental Staff to decide what an acceptable overhead rate, profit, risk factor, value of waiting for half a year, and other things would be worth and we would be under their mercy for approval? He further stated that Environmental Scientists will be deciding economic terms.

Chairman Haycock responded that approval of those costs would have to come back before the Board for approval of payment. He reminded Mr. Brosseau that his contract is with Mr. Kamar and not with this Board and he should be looking to Mr. Kamar for his payment. He further stated that if Mr. Kamar wanted to prepare a well written presentation with hard costs including risk, etc. then he would commit to looking at it. He further stated that he would not commit to approving it, but he would look at it.

D. Site Specific Board Determination No. C2014-09 (FOR POSSIBLE ACTION)

Proposed Site Specific Board Determination to Provide Reimbursement for Claim #0007 in the total amount of \$44,475.98 to Kamar Brothers, LV, LLC, for the Arco AM/PM site located at 2000 East Cheyenne Avenue, North Las Vegas, NV - Petroleum Fund No. 2012000018, Facility ID No. 8-001107

Claim #007 in the total amount of \$44,475.98 to Kamar Brothers for the Arco AM/PM site was presented by Ms. King.

Val King presented this item. She acknowledged the Board's stand on the previous item and offered her respect to the Board for their opinion and decision. However, that did not change NDEP's position. This claim represents a new claim submitted on behalf of Mr. Kamar for an additional \$118,142.84. Part of the claim included an invoice from PSMI in the amount of \$92,232.09. This invoice wraps up the remaining dirt moving work which was remaining following the June meeting when this was first heard by the Board.

In absence of the information requested by NDEP which was refused two separate times, which if had been provided, would have substantiated the request for reimbursement, NDEP is again recommending reimbursement at NDEP's contractor bid rates that NDEP believes are appropriate. Note that NDEP is not contesting the work was completed. The invoiced work is being calculated at the NDEP contractor bid rates and applying the 20% reduction and 10% copay. The total amount invoiced from PSMI of \$92,232.09 becomes a recommended reimbursement total of \$35,861.45.

The final recommended amount for reimbursement is \$44,457.98 which includes all other items submitted in this claim. This concluded her presentation.

Chairman Haycock stated that the Board has established a price per ton excavated in the previous claim. He suggested using that price that was paid in the previous claim. That price could be applied here and used to pay this claim because the precedent had been set.

Mr. Todd Croft wanted to clarify Mr. Haycock's recommendation on how the price per ton was established and paid in the first claim. The calculation was agreed on and the procedure on how to apply that calculation was agreed.

Member Maureen Tappan moved to approve the SSBD C2014-09 and that the tonnage price be paid at the same rate that was paid at the last Board meeting with the reductions of 20% and a 10% copayment. Member Peter Mulvihill seconded the motion. Motion carried unanimously.

7. BOARD POLICY RESOLUTION (FOR POSSIBLE ACTION)

A. RESOLUTION No. 2014-01 (FOR POSSIBLE ACTION)

Proposed Resolution No. 2014-01 Provides Clarification Regarding Petroleum Fund Coverage for Discharges from a Pipeline which is connected to Multiple Storage Tanks and also Discharges from Multiple Release Sources in a Single Tank System.

Ms. King presented the proposed Resolution No. 2014-01 which provides clarification regarding petroleum fund coverage for discharges from a pipeline which is connected to Multiple Storage Tanks and also Discharges from Multiple Release Sources in a Single Tank System. She added that the proposed resolution was requested to be developed by the Board to provide clarification at the last Board meeting. The comments that were received on the draft policy were all positive.

Ms. King reviewed the language in the policy and asked if there were further questions from the Board.

Member Wayne Seidel moved to adopt Resolution No. 2014-01 as proposed by staff. Member Maureen Tappan seconded the motion. Motion carried unanimously.

8. **ADOPTION OF CONSENT ITEMS**

The Board will review all items as a consent calendar item, unless the item is marked by an asterisk (*), or a member of the public wishes to speak in regards to the item.

A dagger (†) indicates previously disallowed monies have been appealed where the requested amount is less than the recommended amount.

**STATE BOARD TO REVIEW CLAIMS
REQUESTED/RECOMMENDED AMOUNTS – SEPTEMBER 16, 2014**

HEATING OIL

				<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	1.	1992000102H	Lyon County School District: Yerington Elementary	\$4,497.28	\$4,497.28
FOR POSSIBLE ACTION	2.	2007000013H	Churchill County School District: Bus Barn	\$11,347.88	\$11,347.88
FOR POSSIBLE ACTION	3.	2012000017H	Churchill Co. School District: Old High School	\$12,714.29	\$12,384.56
FOR POSSIBLE ACTION	4.	2013000012H	Roger & Gemma Mateossian: Mateossian Residence	\$3,591.76	\$3,591.76
FOR POSSIBLE ACTION	5.	2013000015H	Gary Cornwall: Gary Cornwall Property	\$774.30	\$774.30
FOR POSSIBLE ACTION	6.	2014000006H	Loretta J. Jones: Loretta Jones Residence	\$5,826.87	\$5,826.87
FOR POSSIBLE ACTION	7.	2014000017H	Derek Warneke: Warneke Residence	\$13,278.81	\$13,278.81
FOR POSSIBLE ACTION	8.	2014000019H	JEF Enterprises: Next Generation Day Care	\$29,610.86	\$29,610.86
FOR POSSIBLE ACTION	9.	2014000021H	Town of Gardnerville: Former Eagle Gas - Gardnerville	\$2,282.50	\$2,282.50
FOR POSSIBLE ACTION	10.	2014000022H	Sanders Winnemucca, LLC: Ace Hardware	\$14,355.62	\$12,994.17
FOR POSSIBLE ACTION	11.	2014000030H	Jeffrey Morby: Morby Property	\$13,061.97	\$12,811.97
FOR POSSIBLE ACTION	12.	2014000031H	Larry Tuntland: Tuntland Property	\$6,482.60	\$3,852.60
HEATING OIL SUB TOTAL:				<u>\$117,824.74</u>	<u>\$113,253.56</u>

NEW CASES, OTHER PRODUCTS

				<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	1.	1997000071	7-Eleven, Inc.: 7-Eleven #25586	\$161,040.26	\$139,613.27
FOR POSSIBLE ACTION	2.	2013000003	7-Eleven, Inc.: 7-Eleven #25586	\$74,420.30	\$66,978.27
FOR POSSIBLE ACTION	3.	2014000002	Chapman Las Vegas Dodge: Chapman Dodge	\$26,676.96	\$3,770.77
FOR POSSIBLE ACTION	4.	2014000007	7-Eleven, Inc.: 7-Eleven #29658	\$57,837.09	\$52,053.38
FOR POSSIBLE ACTION	5.	2014000025	Superior Campgrounds of America: Silver City RV Resort	\$15,989.15	\$8,634.14
FOR POSSIBLE ACTION	6.	2014000029	Red Lion Hotel and Casino: Red Lion Chevron	\$4,972.50	\$4,475.25
NEW CASES, OTHER PRODUCTS SUB TOTAL:				<u>\$340,936.26</u>	<u>\$275,525.08</u>

ONGOING CASES/OTHER PRODUCTS

				<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	1.	1993000011	7-Eleven, Inc.: 7-Eleven #29646	\$17,871.64	\$17,871.64
FOR POSSIBLE ACTION	2.	1993000015	Budget Rent A Car Systems., Inc.: Former Budget Rent-A-Car	\$29,606.49	\$29,606.49
FOR POSSIBLE ACTION	3.	1993000103	Russell Yardley: Charlie Brown Construction	\$9,447.40	\$9,258.45
FOR POSSIBLE ACTION	4.	1993000115	City of Fallon: Former Bootlegger Texaco	\$4,800.00	\$4,800.00
FOR POSSIBLE ACTION	5.	1994000003	Allied Washoe: Allied Petroleum	\$6,622.50	\$6,622.50
FOR POSSIBLE ACTION	6.	1994000012	Wirtz Beverage NV, Inc.: Former DeLuca Liquor & Wine	\$113,222.63	\$113,222.63
FOR POSSIBLE ACTION	7.	1994000027	7-Eleven, Inc.: 7-Eleven #19653	\$10,184.29	\$10,184.29
FOR POSSIBLE ACTION	8.	1994000065	Avis Rent A Car Systems: Avis Rent A Car	\$47,928.86	\$47,529.11
FOR POSSIBLE ACTION	9.	1994000067	Peppermill, Inc.: Former Peppermill Truckstop	\$8,823.02	\$8,471.67
FOR POSSIBLE ACTION	10.	1994000113	Pilot Travel Centers, LLC: Former Unocal Truck Stop	\$35,155.84	\$35,123.86
FOR POSSIBLE ACTION	11.	1994000122	Mike's Gas-A-Mart: Mike's Gas-A-Mart	\$7,742.96	\$7,742.96
FOR POSSIBLE ACTION	12.	1995000012	N Nevada Asset Holdings LLC: Parker's Model T	\$7,264.00	\$6,537.60
FOR POSSIBLE ACTION	13.	1995000039	Al Park Petroleum, Inc.: Crescent Valley Market	\$30,166.05	\$27,149.44
FOR POSSIBLE ACTION	14.	1995000042	FBF Inc. dba Gas For Less: Gas For Less	\$585,092.57	\$526,583.32
FOR POSSIBLE ACTION	15.	1995000074	Vera Hester: Glendale Service Facility	\$36,195.57	\$32,576.02
FOR POSSIBLE ACTION	16.	1996000063	Joan Pennachio: V&V Automotive	\$5,987.80	\$5,389.02
FOR POSSIBLE ACTION	17.	1996000064	H&A Esslinger, LLC: Red Rock Mini Mart	\$9,973.00	\$9,673.81
FOR POSSIBLE ACTION	18.	1997000008	Ewing Brothers, Inc.: Ewing Brothers Facility	\$2,467.00	\$2,220.30
FOR POSSIBLE ACTION	19.	1998000046	Willdens Automotive Holdings: Frmr Allstate Rent A Car	\$236,949.64	\$213,198.14
FOR POSSIBLE ACTION	20.	1999000011	Terrible Herbst Oil Company: Terrible Herbst #133	\$248.00	\$223.20
FOR POSSIBLE ACTION	21.	1999000014	Al Park Petroleum: Conoco Pit Stop #7	\$26,145.97	\$23,531.38
FOR POSSIBLE ACTION	22.	1999000017	Reed, Inc.: Reed R-Place Shell	\$71,423.42	\$58,441.86
FOR POSSIBLE ACTION	23.	1999000022	Terrible Herbst: Terrible Herbst #129	\$19,658.79	\$17,692.91
FOR POSSIBLE ACTION	24.	1999000029	Terrible Herbst Oil Company: Terrible Herbst #136	\$8,494.61	\$7,645.15
FOR POSSIBLE ACTION	25.	1999000048	Estate of Robert Cowan: Former Lightning Lube	\$5,306.12	\$5,306.12
FOR POSSIBLE ACTION	26.*	1999000052	Estate of Martin T Wessel: Ted's Chevron	\$12,500.49	\$14,760.44
FOR POSSIBLE ACTION	27.	1999000064	Al Park Petroleum, Inc.: Conoco Pit Stop	\$32,184.88	\$28,966.39
FOR POSSIBLE ACTION	28.	1999000066	HP Management LLC: Former Haycock Petroleum	\$12,420.60	\$10,945.67
FOR POSSIBLE ACTION	29.	1999000086	Terrible Herbst Oil Company: Terrible Herbst #126	\$8,113.42	\$7,302.08
FOR POSSIBLE ACTION	30.	1999000090	HP Management LLC: Former Haycock Petroleum	\$18,592.73	\$16,547.38
FOR POSSIBLE ACTION	31.	1999000104	Terrible Herbst Oil Company: Terrible Herbst #118	\$74,580.77	\$69,452.66
FOR POSSIBLE ACTION	32.	1999000114	City of Fallon: Fallon Maintenance Yard	\$4,316.44	\$3,884.80
FOR POSSIBLE ACTION	33.	1999000115	Shell Oil Products US: Former Shell Service Station	\$12,822.98	\$10,778.73
FOR POSSIBLE ACTION	34.	1999000135	Terrible Herbst Oil Company: Terrible Herbst #106	\$10,438.65	\$9,394.78
FOR POSSIBLE ACTION	35.	1999000137	Terrible Herbst Oil Company: Terrible Herbst #152	\$14,964.46	\$12,101.63

ONGOING CASES/OTHER PRODUCTS: CONTINUED

				<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	36.	1999000167	City of Las Vegas: Fire Station #1	\$223,423.26	\$223,423.26
FOR POSSIBLE ACTION	37.	1999000186	Gloria Gayle Pilger: Forger D&G Oil Facility	\$27,000.20	\$24,138.18
FOR POSSIBLE ACTION	38.	1999000199	Mary Ann Ferguson: Lakeshore Orbit Station	\$34,785.55	\$34,785.55
FOR POSSIBLE ACTION	39.	1999000243	7-Eleven, Inc.: 7-Eleven #27607	\$11,492.97	\$10,343.68
FOR POSSIBLE ACTION	40.	1999000244	7-Eleven, Inc.: 7-Eleven #22070	\$11,510.36	\$10,359.32
FOR POSSIBLE ACTION	41.	1999000257	University of Nevada: Newlands Agriculture	\$3,361.60	\$3,361.60
FOR POSSIBLE ACTION	42.	1999000273	V.K. Leavitt: The Waterhole	\$40,840.14	\$36,756.12
FOR POSSIBLE ACTION	43.	2004000011	TA Operating LLC: Four Way Truck Stop	\$80,435.51	\$72,380.23
FOR POSSIBLE ACTION	44.	2004000039	Clark Co. Dept. of Aviation: Former National Car Rental	\$101,539.37	\$100,618.41
FOR POSSIBLE ACTION	45.	2005000002	Carson Valley Oil Co., Inc.: Carson Valley Oil	\$19,323.25	\$17,376.05
FOR POSSIBLE ACTION	46.	2005000025	Bordertown, Inc.: Winner's Corner	\$5,126.79	\$4,614.11
FOR POSSIBLE ACTION	47.	2005000044	Ewing Brothers, Inc.: Ewing Brothers Facility	\$20,232.80	\$16,388.57
FOR POSSIBLE ACTION	48.	2007000014	Ace Cab Company: Ace Cab Company	\$26,333.90	\$22,769.01
FOR POSSIBLE ACTION	49.	2007000016	TOC Holdings Company: Former Time Oil #6-100	\$16,753.14	\$15,077.83
FOR POSSIBLE ACTION	50.	2008000005	Avis Rent A Car Systems: Former Avis Rent A Car	\$4,501.68	\$4,051.51
FOR POSSIBLE ACTION	51.	2008000017	Francois Alvandi: Flamingo AM/PM #82153	\$23,220.63	\$12,539.14
FOR POSSIBLE ACTION	52.	2008000018	Jacksons Food Stores, Inc.: Former Terrible's #830	\$26,953.58	\$24,890.02
FOR POSSIBLE ACTION	53.	2008000019	One Panou, LLC: Stop N Shop #2	\$14,236.96	\$12,813.27
FOR POSSIBLE ACTION	54.	2009000009	Mr. Tom Schwarz: Zak's Mini Mart	\$14,552.00	\$10,477.44
FOR POSSIBLE ACTION	55.	2009000017	D&J Holdings, LLC: Convenience Corner Shell	\$27,197.18	\$24,477.47
FOR POSSIBLE ACTION	56.	2009000028	Vegas Rainbows, Inc.: Mick & Mac's Food Mart	\$22,333.03	\$19,597.23
FOR POSSIBLE ACTION	57.	2010000001	Smitten Oil & Tire Company: The Gas Store	\$4,905.80	\$4,415.22
FOR POSSIBLE ACTION	58.	2010000003	SIRA Truck Holdings LLP: Big Wheel Travel Center	\$782.50	\$704.25
FOR POSSIBLE ACTION	59.	2010000007	Pecos Express, Inc.: Pecos Express	\$19,546.22	\$17,551.10
FOR POSSIBLE ACTION	60.*	2010000009	TA Operating: Mill City Travel Center	\$0.00	\$53,420.51
FOR POSSIBLE ACTION	61.	2010000010	Pacific Convenience & Fuel: Victorian Food Mart	\$6,887.18	\$6,198.47
FOR POSSIBLE ACTION	62.	2011000006	7-Eleven, Inc.: 7-Eleven #29384	\$70,849.85	\$63,764.87
FOR POSSIBLE ACTION	63.	2011000007	Echo Bay Marina, LLC: Echo Bay Marina	\$39,277.03	\$35,349.33
FOR POSSIBLE ACTION	64.	2011000009	Cimarron West: Cimarron West	\$9,516.03	\$7,662.18
FOR POSSIBLE ACTION	65.	2012000003	7-Eleven, Inc.: 7-Eleven #26627	\$4,758.73	\$3,426.28
FOR POSSIBLE ACTION	66.	2012000004	7-Eleven, Inc.: 7-Eleven #15426	\$58,870.71	\$37,182.87
FOR POSSIBLE ACTION	67.	2012000005	ARAMARK Corporation: Zephyr Cove Resort	\$48,460.95	\$43,614.86
FOR POSSIBLE ACTION	68.	2012000011	Golden Gate Petroleum: Baldini's Grand Pavilion	\$4,820.88	\$4,337.04
FOR POSSIBLE ACTION	69.	2012000012	Dewey Has Gas, Inc.: Smart Mart	\$35,099.88	\$28,190.67
FOR POSSIBLE ACTION	70.	2012000020	Francois Alvandi: Charleston AM/PM #85155	\$4,376.00	\$3,938.40

ONGOING CASES/OTHER PRODUCTS: CONTINUED

				<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	71.	2012000022	7-Eleven, Inc.: 7-Eleven #26873	\$41,848.66	\$37,663.79
FOR POSSIBLE ACTION	72.	2013000005	RB Properties, Inc.: South Pointe Market	\$12,098.80	\$10,888.92
FOR POSSIBLE ACTION	73.	2013000009	Western Petroleum: Western Petroleum	\$5,340.52	\$4,806.47
FOR POSSIBLE ACTION	74.	2013000010	Slots Unlimited, LLC, Village Shop #2	\$4,249.00	\$3,059.28
FOR POSSIBLE ACTION	75.	2013000011	Slots Unlimited, LLC, Village Shop #4	\$18,120.22	\$16,308.20
FOR POSSIBLE ACTION	76.	2013000014	7-Eleven, Inc.: 7-Eleven #22579	\$7,382.19	\$6,643.97
FOR POSSIBLE ACTION	77.	2013000019	Hardy Enterprises, Inc.: Sinclair Mini-Mart	\$4,592.11	\$4,132.90
FOR POSSIBLE ACTION	78.	2013000020	7-Eleven, Inc.: 7-Eleven #26395	\$12,299.58	\$11,069.62
FOR POSSIBLE ACTION	79.	2013000021	7-Eleven, Inc.: 7-Eleven #27700	\$3,971.65	\$3,574.48
FOR POSSIBLE ACTION	80.	2014000003	Sterling-UN Reno, LLC: Former Luce & Sons	\$5,140.30	\$4,626.27
FOR POSSIBLE ACTION	81.	2014000010	7-Eleven, Inc.: 7-Eleven #29667	\$27,456.03	\$24,710.43
FOR POSSIBLE ACTION	82.	2014000016	Fran Smitten: Smedley's Chevron	\$2,302.50	\$2,072.25
FOR POSSIBLE ACTION	83.	2014000018	Morrey Distributing: Morrey Distributing	\$2,397.45	\$2,157.71

ONGOING CASES/OTHER PRODUCTS SUB TOTAL: \$2,748,218.26 \$2,553,444.77

REQUESTED RECOMMENDED

CLAIMS TOTAL: \$3,206,979.26 \$2,942,223.41

Chairman Haycock informed the Board that under Ongoing Cases C, item numbers 28 and 30, relative to HP Management LLC, he is the managing partner is that company and his vote will therefore not relate to those two items.

Mr. Cox informed the Board that under Ongoing Cases C, Item Number 5 that he is the CEO of Allied Washoe Petroleum Company and is therefore recusing his vote to those items.

Member Maureen Tappan moved for approval of the consent items, Heating Oil items 1 through 12, New Cases/Other Products items 1 through 6, and Ongoing Cases/Other Products items 1 through 83. Motion was seconded by Member Dave Emme. Motion carried unanimously.

9. EXECUTIVE SUMMARY

Ms. King provided the Board the Executive Summary. She stated that since the Fund was created, a total of 1,462 remediation cases applied for Fund coverage. Of those applications, 123 were denied Fund coverage due to ineligibility. Of the cases that were provided Fund coverage, 1,060 cases were closed and no longer receive Fund reimbursement. There are 8 cases pending a coverage determination. Forty-six applications have expired for various reasons, including failure to submit to NDEP necessary facts regarding the remediation case which would allow for Fund coverage. Currently there are 225 open cases.

The State Fiscal year 2015 began on July 1, 2014. Since that date NDEP has received 5 new applications for Fund coverage.

Prior to this Board meeting the Board to Review Claims approved a total of approximately \$182.43 million for reimbursement to petroleum storage tank operators throughout Nevada for clean up expenses.

With today's approval of approximately \$2.94 million for cleanup reimbursement, the cumulative Fund expenditure is approximately \$185.37 million.

The Tank Enrollment fees are tracked pursuant to the Federal Fiscal Year (FFY). FFY 2014 runs October 1, 2013 through September 30, 2014. The tank invoices for FFY 2014 were issued mid August, 2013. A total of 1,411 facilities were invoiced at \$100 per petroleum tank system. As of August 28, 2014, 1,336 (~94%) of the facilities have submitted the required fees.

A contractor has been hired to develop the Petroleum Fund Interactive Database. He began actively working on June 2nd of this month. He is making steady progress.

Eagle Gas North Cleanup Status: Pursuant to NRS 590.870(1) and NRS 590.830(2), NDEP is responsible for the cleanup, using Petroleum Fund resources, if the responsible party is remiss. During the September 12, 2013 Board Meeting, NDEP and the Attorney General's Office presented the case of Eagle Gas North to the Board. The responsible party has refused to comply with both NDEP Orders and District Court Orders, thereby forcing NDEP to apply the above statutes in response. NDEP requires reimbursement of all money spent from the Fund and the Controllers Office continues to pursue the collection of that money. Mr. Todd Croft will provide the Board a brief status update of the clean-up activities to date.

Eagle Gas Cleanup Project – Mr. Todd Croft reported that the remediation system (sparge and vapor extraction system) is going into the ground now. NDEP had done an investigation and removed the tanks in July of 2013 after getting an order from the courts. In the fall of 2013 NDEP conducted a detailed site assessment and developed a conceptual site model so we knew where the soil was contaminated, where the groundwater was contaminated, and so on. A corrective action plan was approved in June this year. The plan is to run the remediation system for about two years and then monitor for a year and depending on data results, we should be completed. If you drive by the site you can see the piping that has been installed. By early October we should have it turned on and operating.

About a year ago, NDEP had informed the Board that NDEP was going to IFC to get approval to use Petroleum Funding as we had used all of the Federal funding received for the project. Depending on how the project goes, we may not have a need to use all of the Petroleum Funding provided as the funding is being used wisely. We will continue to update the Board on all activities. Chairman Haycock thanked Mr. Croft for all of his work on this project.

Val King added that Mr. Greg Lovato had been promoted to Deputy Administrator and the new Bureau Chief is Mr. Jeff Collins whom she introduced.

10. PUBLIC FORM

Chairman Haycock asked if there were any members of the Public who would like to speak.

Mr. Joe McGinley, with McGinley & Associates asked to speak as a member of the Public. He stated that he has worked with the Board since its conception. He stated that he has a concern regarding the Kamar site and decisions made. Every site that he and his company work on with the Petroleum Fund has a 10% copay and some of his other sites have an additional deduction. For example, one of his clients was hit with a 40% deduction. What he heard from this board today is that if he gets legitimate bids, he can go to his contractors, and tell them that they have a 50% risk, so they had better adjust their bids to accommodate for that risk. He suggested that perhaps the Board should look at eliminating deductions.

Chairman Haycock acknowledged the concern and said that it was a point well taken. He suggested thinking about having a workshop to discuss it at a future meeting.

Other comments:

Member Maureen Tappan stated that she really learned a lot this month and very much appreciated the staff and their efforts to provide as much information as possible to the board. She stated that the staff did an excellent job and she really appreciated all of their efforts and work this month.

11. CONFIRMATION OF NEXT BOARD MEETING DATE

It was confirmed the next meeting date would be *Thursday, December 18, 2014 at 10:00 am.*

12. ADJOURNMENT

There being no further business, the meeting adjourned at 12:36 pm.